IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1665 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAINUL AABEDIN RAMJANBHAI

Versus

ALTAFFHUSEIN ABDULMUTALIB

Appearance:

1. Civil Revision Application No. 1665 of 1981

MR VC DESAI for Petitioner

MR MM TIRMIZI for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/08/2001

ORAL JUDGEMENT

This revision under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (`the Act' for short) by the original defendant-tenant is filed being aggrieved by the judgment and decree dated 5-12-1980 rendered by the learned Appellate Bench of the

Small Causes Court, Ahmedabad in Civil Appeal No.409 of 1977 whereby the Appellate Bench, by allowing the said appeal of the plaintiff-landlord, has set aside the judgment and decree dated 22-7-1977 rendered by the learned Small Causes Judge, Ahmedabad in H.R.P.Suit No.4729 of 1973 dismissing the suit filed by the original plaintiff-landlord for possession and arrears of rent.

2. Brief facts of the case are as under:

2.1 A suit for recovery of possession and arrears of rent was filed by the plaintiff against the defendant. As per the say of the plaintiff, his father's sister Bai Shahjadi was the original owner of the suit premises. After the death of said Bai Shahjadi, he became the owner of the suit property wherein the defendant was the tenant of the suit premises at a monthly rent of Rs.10/- plus municipal tax and education cess. It was his say that since the defendant was a tenant in arrears from 1-6-1970, the tenancy of the defendant was terminated by the plaintiff by demanding arrears of rent vide notice dated 19-7-1973. Though notice was duly served on the defendant, defendant did not comply with the notice and, therefore, the suit was filed by the plaintiff on various grounds along with the ground of tenant in arrears.

2.2 The defendant appeared and filed his written statement raising various contentions precisely that he was not tenant in arrears and the amount of rent fixed at Rs.10/-was not a standard rent. It was denied that the defendant was not the owner of the suit premises after the demise of Bai Shahjadi. There was a dispute regarding the ownership of the property among the heirs of Bail Shahjadi and, therefore, he could not pay the rent amount to anybody. Since administration of the property was being done by the Jamat Panch, he requested the Jamat Panch to accept the rent, but they were not ready to part receipt for the amount paid by him and hence, same was paid before the Court below.

2.3 Plaintiff examined one Mohmad Taufiq Mohmedyusuf at Ex.37, the general power of attorney holder of the plaintiff. He also produced and relied upon certain documentary evidence on record more particularly property register Ex.42. Whereas defendant himself entered into witness box and his oral evidence was recorded at Ex.51.

2.4 After hearing the learned advocates for the respective parties, Trial Court dismissed the suit of the plaintiff on all the aspects and, therefore, the plaintiff preferred Civil Appeal No.409 of 1977 before

the Appellate Bench of Small Causes Court at Ahmedabad. Said appeal was allowed by the Appellate Bench and the judgment and decree rendered by the Court below dismissing the suit were reversed against which, present Civil Revision Application has been preferred.

3. Heard learned counsel for the petitioners, Mr.V.C.Desai and learned counsel for the respondent, Mr.M.M.Tirmizi.

4. Only point which is required to be dealt with by this Court is whether the present respondent-original plaintiff was the owner of the suit property on the date on which the suit notice was issued and the date on which the suit was filed.

5. It is the say of the petitioners-original defendant from the very beginning i.e. from the stage of reply to the notice that the present respondent is not the owner of the suit property which has been specifically raised in the written statement pursuant to which, specific issue was framed by the Trial Court as issue No.7 that "Has the plaintiff right to file the suit ?" To prove the same, burden was shifted on the plaintiff. The power of attorney holder of plaintiff has deposed at Ex.37 and has also produced and relied upon property register Ex.42. The relevant discussion has been made by the Trial Court vide issue No.7 at page 24 more particularly para 7 wherein the Court has held that plaintiff is the only heir of Bai Shahjadi relying upon Ex.42 which is the copy of the mutation entry made in the City Survey record. Relying upon 41 G.L.R. 939, it was held by the Court below that there is a prima-facie evidence of title, but it is not a conclusive one. It was stated in the said para by the Court below that defendant is not serious about the allegation because he did not state in his deposition as to who is the heir and legal representatives of Bai Shahjadi. It is the case of the defendant from very beginning as well as in written statement and oral evidence that the plaintiff has no right to file a suit as he is not the owner of suit property and, therefore, question that the defendant is not serious about this allegation does not arise and observation made by the Court below on this aspect is not based on evidence. As I have stated earlier, it is the contention which has been raised by the defendant from very beginning. Mr.Desai has drawn my attention towards Ex.42 which shows that the mutation entry has been made in the City Survey Record on 30-7-1973 and as per the oral evidence of the plaintiff, notice Ex.40 has been given by the plaintiff to the defendant through his

advocate on 20-3-1973. If the correction of the date in the office copy of the suit notice is accepted, then also, notice has been issued by the plaintiff to the defendant on 20-7-1973. In any circumstances of the matter, notice has been issued prior to mutation entry. Over and above, even as per the oral evidence of the plaintiff's power of attorney holder, he has not produced any documentary evidence to establish that plaintiff became the owner and occupier of the property in question after the sad demise of the Bai Shahjadi. Even no specific date has been given in oral evidence as to on what basis and on what date, he became the owner of the property and no other documentary evidence has been produced and proved by the plaintiff. No other witness has been examined by him. On the contrary, it has been established from the record and proceedings that the dispute regarding the ownership has arisen among the heirs of the deceased Bai Shahjadi after her death, i.e. from 1-6-1970 and Jamat Panch was administering the property in question till 30-7-1973. As per the evidence on record, on the date on which the notice was issued, the plaintiff was not the owner of suit property and as I have stated earlier, the Trial Court has dismissed the suit on all three grounds, i.e. tenant in arrears, acquiring suitable premises by the defendant and change of use. The Appellate Court has reversed the judgment of the Trial Court only on one aspect i.e. during the pendency of appeal, defendant has not deposited the rent regularly in the Court and, therefore, the question of ownership is the only question which is required to be dealt with by this Court. Sec.12(2) of the Act provides as under:

> "No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882."

6. It is clear that if the tenant is in arrears of rent for more than six months, notice under Sec.12(2) is a statutory requirement and, therefore, there must be a specific demand asking the tenant to pay the arrears. In the absence of such a specific demand, no suit for possession is required to be entertained. Sec.12(2) of the Act is also very clear that such a notice is required

to be given by the landlord. In this case, plaintiff is not a landlord as defined under Sec.5(3) of the Act at the relevant time and, therefore, notice given by the plaintiff under Sec.12(2) is not a notice as required under the law and, therefore, no suit can lie on the basis of said notice. Sub-Section (3) of Section 5 of the Act defines "landlord" as under:

> ""landlord" means any person who is for the time being, receiving or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises;"

It is, therefore, clear that the present respondent-plaintiff was not a landlord of the suit premises at the relevant time. Since he does not fall under the definition of "landlord" as a trustee or a person in any capacity under the Act, he has no right to file the suit on that date and hence, the suit in question itself is not maintainable.

7. Under the circumstances, I am of the opinion that the learned Appellate Bench was not justified in passing the decree of eviction against the petitioner-tenant and hence, the judgment and decree of the Appellate Court require to be set aside and this Civil Revision Application deserves to be allowed.

8. Thus, this Civil Revision Application is allowed. Judgment and decree dated 5-12-1980 passed by the learned Appellate Bench of the Small Causes Court, Ahmedabad in Civil Appeal No.409 of 1977 to the extent of directing the tenant to hand over the possession of the suit premises to the landlord are quashed and set aside. Judgment and decree passed by the Trial Court are restored. Rule is made absolute in aforesaid terms. There shall be no order as to costs.

(R.P.DHOLAKIA,J.)
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